Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/22/0257

Re: Property at 5 Swift Brae, Livingstone, EH54 6GY ("the Property")

Parties:

Mrs Antia De Longie, 10 Kennedy Park, Mid Calder, EH35 0RG ("the Applicant")

Ms Natasha Calder, Mr Steven McClelland, 5 Swift Brae, Livingstone, EH54 6GY ("the Respondent")

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the FTT") determined to grant an order for payment of £3,578.00 by the Respondents in favour of the Applicant.

A Procedural Background:

This is an application for a payment order under Rule 70 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (the rules) dated 28 January 2022.

The Applicant submitted the following documents:
1. Tenancy agreement with AT5 and Tenant commencing on 11 September 2017 between the parties over the property.
2. Rent statement up to 1 December 2021 showing arrears of £2,388.00
3. Letter dated 18 February 2022 to the FTT updating the arrears.
4. Rent statement up to 1 February 2022 showing arrears of £3,578.00

On 4 March 2022 the Tribunal served on the Respondents by Sheriff Officers the notification of the Case Management Discussion on 22 April 2022 at 14.00.

No representations were received from the Respondents.

On 19 and 20 April 2022 the Applicant's representative sent emails to the FTT advising that the Applicant wished to include in the application further sums for arrears and damages. These were not quantified.

The documents are referred to for their terms and held to be incorporated herein.

B The Case Management Discussion:
A Case Management Discussion was held on 22 April 2022. Mr Simpson of Saltouns Property Letting on behalf of the Applicant participated in the Case Management Discussion (CMD). The Respondents did not participate and were not represented. They had not lodged any representations. The Legal Member summarised the purpose of the CMD under Rule 17 and advised that a decision can be made in terms of Rule 18 if all relevant facts are agreed at the CMD and it is not contrary to the interests of the parties to do so.

Mr Simpson stated that the Respondents had now left the property and that the Applicant wished to pursue then for the full arrears up to the date of leaving the property and for damages. The Legal Member explained that in terms of the principle of fair notice and in terms of the amendment procedures set out in the rules of procedure only amounts for which the Respondents had fair notice prior to the CMD could be taken into account and thus if the application was to be amended to include further elements this would have to be notified to the Respondents and formally quantified. Mr Simpson stated the reason this had not been done was that he was still awaiting some invoices and other documentation. Mr Simpson asked for the FTT to grant a payment order for the arrears updated in the letter of 18 February 2022 with the updated rent ledger totalling £3,578.00 as this had been intimated to the Respondents with the case papers when these were served on the Respondent on 4 March 2022. The sum was still outstanding. He stated rather than delaying a decision to be made at the CMD any sums not captured by that would be claimed in a separate application in due course. He moved for the order to be granted.

C Findings in Fact:
Based on the evidence lodged and the representations of Mr Simpson at the CMD the FTT makes the following findings in fact:
1. The parties entered into a Short Assured Tenancy Agreement for the property starting at commencing 11 September 2017.
2. The tenancy continued until after 4 March 2022.
3. In terms of Clause 3 of the tenancy agreement the monthly rent is payable in advance at the rate of £595 per month
4. As at 1 February 2022 the arrears of rent for the property were £3,578.00
5. The arrears are still outstanding as at the date of the CMD.

D Reasons for the Decision:

1. The Tribunal make the decision on the basis of the written evidence lodged and the evidence of the Applicant's representative at the CMD.

2. The Tribunal did not consider that there was any need for a hearing as there had been no defence lodged by the Respondents and the application had not been opposed. In terms of Rule 18 of the Rules of Procedure the Tribunal is satisfied that it is not contrary to the interests of the parties to make a decision at the CMD and that the information available in document form and from the Applicant's Representative at the CMD allows sufficient findings to determine the case.

3. The Respondents had been served the case papers including the updated rent statement showing the increase in outstanding rent to £3,578.00 up to and including 1 February 2022. The Respondents had fair notice of the representations of the Applicant forming the reasons for the application and the arrears amount and had not challenged these. The FTT thus considers that the Respondents did not dispute the facts set out in the case documentation.

4. The Applicant is entitled to payment of the sum of £3,578.00 rent arrears for the rental period up to and including 1 February 2022.

5. The Tribunal grants the order as rent lawfully due to the Applicant by the Respondent had not been paid.

E Decision

The Tribunal grants an order for payment of £3,578.00 by the Respondents in favour of the Applicant.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

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Petra Hennig McFatridge   **22 April 2022**
Legal Member/Chair   **Date**